



GAIL FARBER, Director

COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

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April 14, 2009

IN REPLY PLEASE
REFER TO FILE:

WR-1

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**FUNDING SUPPLEMENT TO BIG TUJUNGA DAM SEISMIC REHABILITATION
AND SPILLWAY MODIFICATION PROJECT CONSULTANT SERVICES
AGREEMENT WITH MWH AMERICAS, INC.
(SUPERVISORIAL DISTRICT 5)
(3 VOTES)**

SUBJECT

This action is to supplement a contract with MWH Americas, Inc., for the Big Tujunga Dam Seismic Rehabilitation and Spillway Modification Project – Engineering Support Services due to greater-than-expected engineering support services required during construction of the seismic rehabilitation project.

**IT IS RECOMMENDED THAT YOUR BOARD ACTING AS THE GOVERNING BODY
OF THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT:**

Award and authorize the Director of Public Works or her designee to execute Supplemental Agreement 7 to Contract No. 70407 with MWH Americas, Inc., for the Big Tujunga Dam Seismic Rehabilitation and Spillway Modification Project – Engineering Support Services, for a not-to-exceed additional fee of \$1,300,000, increasing the contract amount from \$4,676,718 to \$5,976,718 to be financed by the Fiscal Year 2008-09 Flood Control District Budget.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The purpose of the recommended action is to award and authorize the Director of the Department of Public Works (Public Works) or her designee to execute a supplemental agreement with MWH Americas, Inc., (MWH) to increase the contract amount due to greater-than-expected engineering support services during the construction of the Big Tujunga Dam Seismic Rehabilitation and Spillway Modification Project.

This supplemental agreement will provide Public Works with specialized engineering services necessary to ensure this complex dam rehabilitation project construction meets the design intent and construction costs are kept to a minimum.

Implementation of Strategic Plan Goals

The Countywide Strategic Plan directs the provision of Operational Effectiveness (Goal 1) and Community and Municipal Services (Goal 3). The consultant has the specialized expertise to provide these services accurately, efficiently, and in a responsive manner to support Public Works in meeting these goals.

FISCAL IMPACT/FINANCING

There will be no impact to the County General Fund.

The recommended supplemental agreement is for a not-to-exceed fee of \$1,300,000 for construction support services and will increase the contract amount from \$4,676,718 to \$5,976,718. Financing for these additional services is available in the Fiscal Year 2008-09 Flood Control District Budget.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

On November 19, 1996, your Board approved a consultant services agreement with Harza Engineering Company to conduct a reanalysis study of Big Tujunga Dam and to develop seismic and spillway rehabilitation alternatives to meet State Division of Safety of Dams (DSOD) criteria. On June 25, 2001, Harza Engineering Company merged with Montgomery Watson, Inc., and became MWH. On March 20, 2007, your Board approved the project and adopted the final plans and specifications. Bids for this construction project were received by May 31, 2007. On June 26, 2007, your Board awarded the construction contract to Shimmick Construction Company in the amount of \$88,533,680. Construction activities began in April 2008.

A supplemental agreement, substantially similar to that attached and approved as to form by County Counsel, will be used. The standard Board-directed clauses that provide for termination of services, renegotiation, and hiring qualified displaced County

employees will be included. With the exception of the increase in the not-to-exceed contract amount, all other terms, conditions, and requirements of the contract will remain unchanged.

The agreement contain provisions requiring the contractor to comply with the terms and conditions supporting your Board's ordinances, policies, and programs, including but not limited to: County's Greater Avenues for Independence and General Relief Opportunities for Work Programs (GAIN and GROW), Board Policy No. 5.050; Contract Language to Assist in Placement of Displaced County Workers, Board Policy No. 5.110; Reporting of Improper Solicitations, Board Policy No. 5.060; Notice to Contract Employees of Newborn Abandonment Law (Safely Surrendered Baby Law), Board Policy No. 5.135; Contractor Employee Jury Service Program, Los Angeles County Code, Chapter 2.203; Notice to Employees Regarding the Federal Earned Income Credit (Federal Income Tax Law, Internal Revenue Service Notice 1015); Contractor Responsibility and Debarment, Los Angeles County Code, Chapter 2.202; the Los Angeles County's Child Support Compliance Program, Los Angeles County Code, Chapter 2.200; and the standard Board-directed clauses that provide for contract termination or renegotiation.

On June 26, 2007, your Board awarded a construction contract to Shimmick Construction Company in the amount of \$88,533,680 to construct the Big Tujunga Dam Seismic Rehabilitation and Spillway Modification Project. As the construction progressed, significant additional design support was required, including multiple reviews of contractor submittals, extensive on-site presence during foundation excavation and mapping, and preliminary foundation grouting. Additionally, project construction issues have extended the anticipated completion date thereby requiring engineering support services be extended approximately six months.

The requested supplemental agreement will provide an adequate budget for the remaining anticipated engineering services necessary during project construction. All terms, conditions, requirements, and specifications of the contract will remain unchanged.

ENVIRONMENTAL DOCUMENTATION

In accordance with Section 15378(b)(2) and (b)(5) of the California Environmental Quality Act (CEQA) Guidelines, approval of the recommended action does not constitute a project and, hence, is not subject to the requirements of CEQA.

On January 31, 2006, your Board approved the Mitigated Negative Declaration and Mitigation Monitoring Program prepared for the Big Tujunga Dam Seismic Rehabilitation and Spillway Modification Project.

CONTRACTING PROCESS

On November 19, 1996, your Board awarded Contract No. 70407 to Harza Engineering Company to provide conceptual alternatives for Big Tujunga Dam to meet DSOD criteria. Harza was selected to perform the work after evaluation of proposals from qualified engineering firms who responded to our Request for Proposal. On June 25, 2002, your Board approved Supplemental Agreement 2 with MWH (formerly Harza) for a not-to-exceed fee of \$2,222,418 to prepare final design plans and construction specifications for Big Tujunga Dam. On June 14, 2005, your Board approved Supplemental Agreement 4 with MWH for a not-to-exceed fee of \$175,000 to provide additional engineering and design services for the valve house, control house, gallery design, and additional erosion protection measures and stability evaluation of the left abutment required by DSOD as a consequence of the rockslide triggered by spillway flows in January 2005. Supplemental Agreements 1, 3, and 5 for not-to-exceed amounts of \$24,280, \$4,110, and \$0 respectively, were executed under the authority delegated to the Director. On July 17, 2007, your Board approved Supplemental Agreement 6 for a not-to-exceed fee of \$2,000,000 for construction engineering services during the project advertisement, award, and construction phase.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

There will be no impact on current County services or projects during the performance of the recommended services. Approval of this action will benefit the County by allowing the consultant to provide engineering and construction support services of a specialized nature freeing County resources for other programs.

The Honorable Board of Supervisors
April 14, 2009
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CONCLUSION

Please return one adopted copy of this letter to the Department of Public Works, Water Resources Division.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "G. Farber", with a large, stylized initial "G" and a long, sweeping underline.

GAIL FARBER
Director of Public Works

GF:RHK:yg

Attachment

c: Chief Executive Office (Lari Sheehan)
County Counsel

SUPPLEMENTAL AGREEMENT

Supplemental 7

CONTRACT No. 70407

Subject BIG TUJUNGA DAM SEISMIC REHABILITATION AND
 SPILLWAY MODIFICATION PROJECT
 MWH AMERICAS, INC.

IT IS MUTUALLY AGREED by and between the parties hereto that the above-numbered CONTRACT is hereby amended by the changes, additions, or deletions set forth in the attachment dated March 16, 2009, from the Director of the Department of Public Works, which is hereby referred to and made a part hereof.

Should Contractor, or any subcontractor performing more than \$250,000 of the CONTRACT value, require additional or replacement personnel to perform a skilled trade not covered by an existing union hiring AGREEMENT under this CONTRACT, Contractor is encouraged to consider for such employment openings qualified COUNTY employees who are targeted for layoff or qualified former COUNTY employees who are on a re-employment list. In no event shall the COUNTY be liable for any cost, delay or impact claims arising out of efforts to hire such present and former COUNTY employees.

The provisions of said original CONTRACT shall remain in full force and effect except as modified herein, and the COUNTY shall pay to the Contractor the amount of \$1,300,000, as set forth in said attachment. The total CONTRACT not to exceed is revised from \$4,676,718 to \$5,976,718.

MWH AMERICAS, INC., shall notify its employees, and shall require each subcontractor to notify its employees, that they may be eligible for the Federal Earned Income Credit under the Federal income tax laws. Such notice shall be provided in accordance with the requirements set forth in Internal Revenue Service Notice 1015.

Ownership of COUNTY Materials

a. Consultant and COUNTY agree that all materials, including but not limited to, designs, specifications, techniques, plans, reports, deliverables, data, photographs, diagrams, maps, images, graphics, text, videos, advertising, software, source codes, website plans and designs, interactive media, drafts, working papers, outlines, sketches, summaries, edited and/or unedited versions of deliverables, and any other materials or information developed under this AGREEMENT and any and all Intellectual Property rights to these materials, including any copyrights, trademarks, service marks, trade secrets, trade names, unpatented inventions, patent applications, patents, design rights, domain name rights, know-how, and any other proprietary rights and derivatives thereof, is and/or shall be the sole property of COUNTY (hereafter collectively, "COUNTY Materials"). Consultant hereby assigns and transfers to COUNTY all Consultant's right, title

and interest in and to all such COUNTY Materials developed under this AGREEMENT.

Notwithstanding such COUNTY ownership in the COUNTY Materials, Consultant may retain possession of working papers and materials prepared by Consultant under this CONTRACT. During and for a minimum of five years subsequent to the term of this CONTRACT, COUNTY shall have the right to inspect any and all such working papers and materials, make copies thereof and use the working papers and materials and the information contained therein.

b. Consultant shall execute all documents requested by COUNTY and shall perform all other acts requested by COUNTY to assign and transfer to, and vest in COUNTY, all Consultant's right, title and interest in and to the COUNTY Materials, including, but not limited to, any and all copyrights, trademarks, service marks, trade names, unpatented inventions, patent applications, patents, design rights, domain name rights, know-how, and any other proprietary rights and derivatives thereof resulting from this CONTRACT. COUNTY shall have the right to register all applicable copyrights, trademarks and patents in the name of the COUNTY of Los Angeles. Further, COUNTY shall have the right to assign, license, or otherwise transfer any and all COUNTY'S rights, title and interest, including, but not limited to copyrights, trademarks, and patents, in and to the COUNTY Materials.

c. Consultant represents and warrants that the COUNTY Materials prepared herein under this AGREEMENT, is the original work of Consultant and does not infringe upon any Intellectual Property or proprietary rights of third parties. For those portions of the COUNTY Materials that are not the original work of Consultant, Consultant represents and warrants that it has secured all appropriate licenses, rights, and/or permission from appropriate third parties to include such materials in the COUNTY Materials.

Consultant shall defend, indemnify and hold COUNTY harmless against any claims by third parties based on infringement of copyright, patent, trade secret, trademark, or any other claimed Intellectual Property or proprietary right, arising from COUNTY'S use of COUNTY Materials created and/or prepared by Consultant. Consultant will also indemnify and defend at its sole expense, any action brought against COUNTY based on a claim that COUNTY Materials furnished hereunder by Consultant and used within the scope of this AGREEMENT infringe any copyright, patent, trade secret, trademark, or any other claimed intellectual property or proprietary right of third parties, and Consultant will pay any costs, damages and attorney's fees incurred by COUNTY. COUNTY will notify Consultant promptly and in writing of any such action or claim and will permit Consultant to fully participate in the defense thereof.

d. Consultant shall affix the following notice to all COUNTY Materials: "© Copyright 2007 (or such other appropriate date of first publication), COUNTY of Los

Angeles. All Rights Reserved." Consultant shall affix such notice on the title page of all images, photographs, documents and writings, and otherwise as COUNTY may direct.

e. COUNTY shall also have the sole right to control the preparation, modification, and revisions to, all acknowledgment and/or attribution language for all COUNTY Materials resulting from this AGREEMENT. COUNTY will however, honor requests by Consultant seeking removal of all acknowledgment and/or attribution language relating to the Consultant, should Consultant no longer wish to receive attribution for its work on the COUNTY Materials.

f. If directed to do so by COUNTY, Consultant will place the COUNTY name and COUNTY logo on COUNTY Materials developed under this AGREEMENT. Consultant may not however, use the COUNTY name and COUNTY logo on any other materials prepared or developed by Consultant that falls outside the scope of this AGREEMENT.

IN WITNESS WHEREOF, the COUNTY has, by order of its Board of Supervisors caused these presents to be subscribed by the Director of the Department of Public Works, and the Contractor has hereunto subscribed its corporate name and affixed its corporate seal by its duly authorized officers this _____ day of _____, 2009.

COUNTY OF LOS ANGELES
Acting on behalf of the Los Angeles
County Flood Control District

MWH AMERICAS, INC.

By: _____
Deputy Director
Department of Public Works

By: _____
Vice President

APPROVED AS TO FORM:
RAYMOND G. FORTNER, JR.
County Counsel

By: _____
Deputy

ACKNOWLEDGMENT

State of California

County of _____)

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

**ATTACHMENT 1
MARCH 16, 2009
BIG TUJUNGA DAM SEISMIC REHABILITATION AND
SPILLWAY MODIFICATION PROJECT
MWH AMERICAS, INC.**

The services to be rendered by the Consultant shall include all services as described in their September 9, 1996 proposal, except to the extent they are inconsistent with this attachment and the terms of this AGREEMENT, and shall consist of all such services as are customarily rendered when providing professional services of this type. The services shall be performed in accordance with the following:

SCOPE OF SERVICES

The services to be rendered by the Consultant shall be as described in Supplemental Agreement 6, EXHIBIT 1 dated June 25, 2007.

SCHEDULE OF SERVICES

The Consultant will be given a Notice to Proceed by the County prior to the commencement of services. All services as outlined in Exhibit 1 shall be completed by or before January 31, 2012.

DELIVERABLES

Deliverables shall be as outlined and associated with the tasks listed in Exhibit 1 to Supplemental 6.

COMPENSATION

The total fee for all additional work shall not exceed \$1,300,000. This will increase the total Contract not to exceed fee from \$4,676,718 to \$5,976,718.

RESERVATION OF RIGHTS

This amendment shall not constitute a waiver of any rights held by the County. Further, compensation paid to the Consultant under the original Contract No. 70407 and any amendments or supplemental agreements and under this Supplemental Agreement No. 7, are neither an admission against interest, nor an endorsement that prior work is either partially or fully acceptable to the County. County further reserves all rights to hold Consultant responsible for damages which may arise from errors or omissions committed by Consultant and Consultant's agents and assigns, if any.